IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8710 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS & LRS OF LATE NAZIR MOHAMMAD ALLAUDIN LILGAR

Versus

HEIRS & LRS OF LATE YUSUFBHAI ALLARAKHJI

Appearance:

1. Special Civil Application No. 8710 of 2002

MR KV SHELAT for Petitioner No. 1

..... for Respondent No. 1-1/3,1/5-1/6

MR DK NAKRANI for Respondent No. 1/4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 05/12/2002

ORAL JUDGEMENT

1. Rule. Mr.D.K.Nakrani, learned Counsel for the

respondents No.1-1/6 waives service of notice of rule. With the consent of all the parties, the matter is taken up for final hearing today.

2. The short point involved in this petition is that the amendment application was made, which has been rejected by the trial Court as per the order dated 1-8-2002, which is the subject matter of this petition.

3. The facts of the case are that the petitioners are the tenants and the respondents are landlords. It is the case of the petitioners that since they being the legal heirs of the original defendant namely; Nazir Mohammad Allaudin Lilgar, they were not aware of the proceedings of the earlier suit being H.R.P. suit No.4136/1981. It is the contention of the petitioners that the judgement was delivered by the Small Cause Court No.5 at Ahmedabad in the aforesaid HRP suit, where it is inter alia contended by the landlords that the superstructure is constructed by the defendant-tenant therein and, therefore, the application was made to amend the written statement. The learned trial Judge found that since the evidence by both the sides were over and the matter was at the stage of arguments, the application for amendment could not be granted and hence rejected. It is under these circumstances, the present petition.

4. I have heard Mr.Shelat, learned Counsel for the petitioners and Mr.Nakrani, learned Counsel for the respondents. In my view, the law is settled on this point that normally the amendment should be granted on compensating the other side by appropriate cost. In this regard, it would be worthwhile to refer to the decision of the Apex Court in the case of "B.K.N Pillai v. P.Pillai and anr." reported in AIR 2000 SC, 614, wherein at para 5, the Court observed as under:

> 5. In the appeals the appellant-defendant wanted to amend the written statement by taking a plea that in case he is not held a lessee, he was entitled to the benefit of Section 60(b) of the Indian Easements Act, 1882. Learned counsel for the appellant is not interested in incorporation of the other pleas raised in the application seeking amendment. The plea sought to be raised is neither inconsistent nor repugnant to the plea already raised in defence. The alternative plea sought to be incorporated in the written statement is in fact the extension of the plea of the respondent-plaintiff and rebuttal to the issue regarding liability of the appellant of

being dispossessed on proof of the fact that he was a licencee liable to be evicted in accordance with the provisions of law. The mere fact that the appellant had filed the application after a prolonged delay could not be made a ground for rejecting his prayer particularly when the respondent-plaintiff could be compensated by costs. We do not agree with the finding of the High Court that the proposed amendment virtually amounted to withdrawal of any admission made by the appellant and that such withdrawal was likely to cause irretrievable prejudice to the respondent."

5. Normally the Court may not permit the amendment which either results into any dilatory tactics or to meet with the defence by any subsequent documents upon which the reliance cannot be placed. In the present case, the amendment is sought to be made on the basis of the record of the Court proceedings and judgement delivered therein. What is the effect of the said judgement and whether it is helpful to the petitioners in establishing the case is not required to be decided at this stage. Suffice to say that when the contention is sought to be canvassed on the basis of documentary evidence of the Court record itself, normally it should be granted. It is true that the delay is caused on the part of the petitioners in moving the amendment, but the explanation submitted is that the petitioners were not aware about the proceedings and the judgement of the Small Causes Court in the earlier proceedings cannot be totally ignored. Taking lenient view on the said aspect and more particularly when the other side namely, respondents herein can be compensated by costs, I find that the ends of justice would be met, if the following directions are given:

5.1 The order of the Small Causes Court dated 1-8-2002 passed below application for amendment, which is under challenge shall stand substituted with the modification that the application for amendment shall stand allowed on condition that the petitioners pay the cost of Rs.5,000/= to the respondents towards the amendment and also towards the cost of litigation of this Court.

5.2 The respondents herein shall be at liberty to withdraw the amount of Rs.5,000/=, which the petitioners have already deposited pursuant to the order dated 5-9-2002.

5.3 On account of the amendment, both the parties

shall be at liberty to lead the evidence. However, the evidence shall only be restricted to the subject matter of the amendment and not on any other points and the learned Judge shall complete the said exercise within a period of one month from the date of receipt of the order of this Court.

6. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Direct service is permitted.

5-12-2002 (Jayant Patel, J.)

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